

DISCUSSION OF PROPOSED REVISIONS TO THE MALIBU BAY COMPANY DEVELOPMENT AGREEMENT

In response to concerns raised during the public review of the proposed Malibu Bay Company Development Agreement (DA) and Draft EIR, the City of Malibu pursued modifications to the proposed DA. The purposes of this discussion are (A) to provide a description of these modifications, and thereby update the project description contained in the Draft EIR, and (B) identify how the EIR conclusions apply in light of these modifications.

A. Proposed Development Agreement Modifications

Option to Purchase Chili Cook-off Site and Associated Removal of Point Dume as Donation Site

Chili Cook-off Site

The proposed modifications to the DA would give the City an option to purchase the entire Chili Cook-off site, and would set forth general parameters for the use of the site if purchased by the City. Existing developed uses would be allowed to remain in their current condition and the property could only be used consistent with the General Plan and Zoning Ordinance. Existing undeveloped portions of the land would be used in perpetuity for open space, park/parkland, water ponds and streams, wastewater/stormwater treatment facilities, emergency staging area, walkways, demonstration gardens, ball fields, accessory parking and/or play areas. The City would not be permitted to sell or use the currently undeveloped portions for commercial purposes. Thus, no increase in commercial development above existing conditions would occur should the City exercise its option to purchase the property.

Point Dume Site

If the City exercises this option to purchase the Chili Cook-off site, the Point Dume site would not be donated to the City for the construction of community and recreational facilities. The City would confer the vested right to the provisions of the General Plan and Zoning Ordinance that currently apply to the site for the 20-year lifespan of the DA. In other words, the City would agree not to amend the General Plan and Zoning Ordinance requirements for this site for the duration of the DA. No specific development would be entitled for the site by the DA. However, the DA provides that a 5,000 square foot community center would be built on Point Dume within 3 years after the close of escrow on the Chili Cook-off site.

Under the proposed DA revisions, Malibu Bay Company would donate \$2.5 million to the City, of which at least 1.5 million would be used for ball fields and community center facilities and up to \$1 million to endow or pay for capital facilities at urgent care facility at the St. John's site. (It is noted that the DA revisions would not result in any physical changes to the St. John's site.) If the City does not exercise its option to purchase the Chili Cook-off site, Malibu Bay Company would donate the Point Dume site and donate an additional \$2.5 million, as analyzed in the EIR.

Trancas Creek Conservation Easement

Under the proposed DA revisions, MBC would grant a conservation easement in Trancas Creek to the National Park Service or City of Malibu, at the City's discretion, for creek restoration and to facilitate beach access. This use may include the construction of a footbridge to link the trail on the commercial site to a path leading in dry weather to the beach. Creation of this easement and any amenities that may be included would be subject to review and approval by the City Biologist.

Other Revisions

The proposed DA revisions include other changes to the DA terms, but these other changes affect timelines and agreement terms that do not relate to the proposed development permitted under the DA.

B. Affect on EIR Conclusions

Option to Purchase Chili Cook-off Site

Under the proposed DA revisions, the Chili Cook-off site may either be developed as described in the Draft EIR or may be purchased by the City. The City's ability to exercise the option of purchasing the site is dependent upon its ability to secure funding for this purpose. The City's approval of the revised DA would simply enable the City to seek funding for this purchase. Once funding is secured, a development plan for the site would be identified, within the parameters and restrictions set forth in the DA. As details of the proposal are not currently available, it would be too speculative to make detailed assumptions about development of the site for the proposed open space and water/wastewater uses. The limitations on the uses if built, however, are considered less intense than the proposed commercial development. Approval of any specific site plan would require environmental review pursuant to the California Environmental Quality Act (CEQA) and possibly the National Environmental Policy Act (NEPA) (due to the requirements associated with the state and federal assistance that the City intends to seek).

The EIR identifies impacts that would occur if the City does not exercise its option to purchase the Chili Cook-off site and the site is developed for commercial use under the entitlements set forth in the DA. If the City does purchase the site, the impacts identified in the EIR and the associated mitigation measures for this site would no longer be applicable. The Chili Cook-off site would not be entitled for development or otherwise considered a development site under the DA.

Potential Removal of Point Dume as Donation Site

The proposed DA modifications allow for two scenarios at the Point Dume site. If the City does not purchase the Chili Cook-off site, the Point Dume site would be donated to the City for development of community and recreational facilities and entitled by the City for such use (including a General Plan Amendment and Zone Change) as described in the Draft EIR. If the City does purchase the Chili Cook-off site, the existing General Plan and Zoning Ordinance requirements for this site would be in effect for the duration of the DA (20 years). The DA would not grant to the applicant entitlements or other development-specific rights for this site; it would just ensure that existing planning and zoning regulation would not be subject to revision. Therefore, under this scenario this site would not be considered a development site. Future requests for approval to develop the site would require environmental review under CEQA.

The EIR identifies impacts that would occur if the City does not exercise its option to purchase the Chili Cook-off site, and therefore the Point Dume site remains a donation site for City development of community and recreational facilities. If the City does purchase the Chili Cook-off site, the impacts identified in the EIR and the associated mitigation measures for the Point Dume site would no longer be applicable. The Point Dume site would not be entitled for development or otherwise considered a development site under the DA. It would be too speculative to attempt to evaluate potential impacts of an as-yet undefined project at the site. As noted, earlier, development of the site would be subject to further CEQA review by the City.

Trancas Creek Conservation Easement

This aspect of the proposal may add further mitigation value to the MBC development proposal, and would need to be designed so as not to *cause* additional environmental impacts (due to placement of the bridge, related increase in human and pet traffic through the area, etc.).